IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 592 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

KUMBHARANA DAYAL CHHAGABHAI

Appearance:

1. Criminal Appeal No. 592 of 1993

MR DP JOSHI for appellant.

MR MJ BUDDHBHATTI for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 14/09/2001

ORAL JUDGEMENT

In this appeal, which is filed under section 378 of the Code of Criminal Procedure, 1973, the State of Gujarat has questioned acquittal of the respondent of the offences punishable under sections 466, 468, 471, 420

read with sections 109 & 114 of the Indian Penal Code recorded by the learned Chief Judicial Magistrate, Jamnagar vide judgment dated February 6, 1993 rendered in Criminal Case No. 3336/88.

2. The respondent was serving as Principal of School No.14 which was being run by the Primary Education Committee of Jamnagar Municipal Corporation. In his Service Book, his date of birth was mentioned to be November 22, 1928 and on attaining the age of 58 years, he would have retired from service on November 21, 1986. Under the circumstances, the Administrative Officer of Primary Education Committee had served a notice dated August 15, 1985 intimating the respondent that he would retire from service after office hours on November 30, 1986. On receipt of the said notice, the respondent had made a representation dated August 21, 1986 and stated that his correct date of birth was June 7, 1935 and not November 22, 1928 which was mentioned in his Service Book and prayed the competent authority to set aside the notice in which it was mentioned that he was to retire after office hours on November 30, 1986. Along with the said representation, the respondent had also sent school leaving certificate issued by the Principal of the School wherein it was mentioned that the date of birth of the respondent was June 7, 1935. The case of the prosecution was that the Principal of the School had issued certificate indicating the date of birth of the respondent to be June 7, 1935 on the basis of Entry No.3186 made in the register maintained by the school, which was interpolated and the respondent with the help of deceased accused, had forged the same in order to gain monetary benefits. Accordingly, a complaint was lodged with Jamnagar City 'A' Division Police Station against the respondent and the deceased accused of the offences punishable under sections 466, 468, 471, 420 read with sections 109 & 114 of the Indian Penal Code. On conclusion of investigation, the respondent and the deceased accused were chargesheeted in the Court of learned Chief Judicial Magistrate, Jamnagar. Charge at Exh.1 was framed against the respondent and deceased accused of the offences punishable under sections 466, 468, 471, 420 read with sections 109 & 114 of the Indian Penal Code. The charge was read over and explained to the accused, who pleaded not guilty to the same and claimed to be tried. During the pendency of proceedings, original accused no.2 expired and, therefore, proceedings against him were treated as having abated. In order to prove its case, the prosecution examined; (1) Chaitanya M. Jani, PW.1, Exh.12, (2) Chandrikaben Nyalchand Gardi, PW 2, Exh.34, (3) Rameshchandra Shamaldas Tikmani,PW

3,Exh.36, and (4) Ramdevsinh Fatesinh Gohil, PW 4,Exh.38. The prosecution also produced documentary evidence in support of its case against the respondent. After recording of evidence of prosecution witnesses was over, the learned Magistrate explained to the respondent the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement as required under section 313 of the Code.In his further statement,the respondent claimed that the case of the prosecution against him was false, but did not examine any witness in support of his defence. On appreciation of evidence adduced by the prosecution, the learned Magistrate has held that the prosecution has failed to prove its case against the respondent relating to offences punishable under sections 466, 468, 471, 420 read with sections 109 & 114 of the Indian Penal Code and acquitted him vide judgment dated February 6, 1993, giving rise to present appeal.

3. Mr. D.P.Joshi, learned A.P.P. after taking me through the entire evidence on record, submitted that the prosecution evidence establishes that in order to get illegal benefits, the respondent had forged document Exh.13 and, therefore, acquittal of the respondent should be reversed. What was claimed was that the respondent had made certain alterations in the register which was maintained in public office as well as forged the document and, therefore, the case of the prosecution against him ought to have been accepted by the learned Magistrate. The learned counsel for the State Government pleaded that the evidence adduced by the prosecution is misappreciated by the learned Magistrate and, therefore, the appeal should be allowed.

4. Mr. Jiten Budhbhatti, learned counsel for the respondent submitted that the prosecution has miserably failed to establish that the respondent had forged document exh.13 and, therefore, acquittal recorded by the learned Magistrate should be confirmed by the High Court. According to the learned counsel for the respondent, the original register was never produced before the Court to establish that the respondent had either made alterations or forged the said document and, therefore, well founded acquittal should not be disturbed in this acquittal appeal. What was claimed was that even if two views of the matter are possible, the view taken by the learned Magistrate being plausible and reasonable, should not be disturbed by the Court in the present appeal.

5. I have heard the learned counsel for the parties and reappreciated the whole evidence on record. It is

true that along with the representation dated August 21, 1986, the respondent had sent certificate issued by the Principal, School No.1, wherein it was mentioned that the date of birth of the respondent was June 7, 1935. However, no evidence worth the name is adduced by the prosecution to establish that the said certificate which bore signature of the Principal, was forged by the respondent. It could not be established by the prosecution that the respondent either dishonestly or fraudulently had made, signed, sealed or executed document Exh.13 or had made any mark denoting the execution of the document by the Principal of School no.1 with the intention of causing it to be believed that such document was made, signed, sealed or executed by Principal of the School. It is relevant to notice that on the basis of said certificate, Entry no.3186 was made in the school register mentioning that the date of birth of the respondent was June 7, 1935. Though it was claimed by the prosecution that the respondent had made alterations in the register, the original register was never produced before the Court to establish that alterations were made in the said register or in Entry No.3186 by the respondent. Further no opinion of an expert, such as examiner of questionable documents was obtained by the prosecution to establish that alterations in the entry were made by the respondent. The learned Magistrate after looking to Exh.21, which is a xerox copy of the register and which was produced by the prosecution, has concluded that no alterations were made therein. In my view, this finding is eminently just and no ground is made out by the learned counsel for the State Government to disturb the said finding. Further the complainant in his substantive evidence before the Court has admitted that it is not the case of the department that the respondent had made alterations in service book maintained by the office. In view of this admission, I am of the opinion that the learned Magistrate was justified in concluding that commission of offences punishable under sections 466, 468, 471, 420 read with sections 109 & 114 of the Indian Penal Code by the respondent was not proved by the prosecution. After going through the reasoned judgment rendered by the learned Chief Judicial Magistrate, Jamnagar, I am satisfied that cogent reasons have been given for acquitting the respondent and the learned counsel for the State Government has failed to dislodge those reasons. The result is that I do not find any substance in the acquittal appeal and the appeal is liable to be dismissed.

For the foregoing reasons, the appeal fails and

is dismissed. Muddamal to be disposed of in terms of directions given by the learned Chief Judicial Magistrate in the impugned judgment.

(J.M.Panchal,J.)

(patel)